THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22523 OF 2003

DATED:30.11.2005

Between:

Nallamanti Venkanna and others

…Petitioners

And

Mandal Revenue Officer, Rambilli Mandal,

Visakhapatnam District and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22523 OF 2003

ORDER:

The petitioners are residents of Rambilli in Visakhapatnam District. The competent authority assigned to them surplus agricultural land as per Section 14 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, the Act) in an extent of Acs.2.00 each in S.Nos.352/2C, 352/2B and 352/2D. They allege that the second respondent filed a suit being O.S.No.78 of 1995 on the file of the Court of Senior Civil Judge, Elamanchali, against the petitioners seeking specific performance of agreement of sale, allegedly executed by the petitioners, which according to them is a fabricated document. The suit was dismissed on 22.4.2002 by the trial Court and aggrieved by the same, second respondent filed A.S.No.112 of 2002. It is also alleged that the petitioners filed a separate suit being O.S.No.30 of

2003 on the file of the Court of Senior Civil Judge, Elamanchalim, for permanent injunction, which is pending. It is further alleged that the second respondent approached the first respondent who proposed steps to dispossess the petitioners from the respective lands. According to the petitioners, the first respondent along with his subordinates came to the land and obstructed the petitioners from entering the land. Therefore, they filed the instant Writ Petition seeking a direction to the respondents not to interfere with the possession of the petitioners without due process of law.

Initially, the matter came up before this Court on 24.10.2003. A learned Single Judge of this Court disposed of the Writ Petition directing the respondents not to interfere with the possession of the petitioners without following due process of law. The second respondent preferred Writ Appeal, being W.A.No.157 of 2004. By an order dt.6.2.2004 the Division Bench set aside the order of the learned Single Judge and remitted the matter to Single Judge for fresh disposal after giving opportunity to the second respondent. It is how the mater is again coming up for admission before this Court.

The second respondent filed a counter affidavit alleging that the petitioners herein executed an agreement of sale in favour of the second respondent on 7.8.1981 and put her in possession, that the suit being O.S.No.30 of2003 filed against second respondent was dismissed on 10.12.2003 and therefore this Writ Petition is not maintainable. She also denied the allegation that at her behest first respondent is interfering with the possession of the petitioners. The first respondent has not filed any counter affidavit before this Court or before the Division Bench.

The learned counsel for the petitioners, Sri M.S.N.Prasad, submits that based on fabricated agreement of sale, the petitioner filed a suit which was dismissed. The petitioners' appeal being A.S.No.112 of 2002 on the file of the Court of IV Additional District Judge, Visakhapatnam, was also dismissed on 26.7.2005 and therefore the second respondent was never in possession of the property. He further contended that the petitioners have toiled and raised coconut plantations and they are in possession of the property by reason of the assignment made under Section 14 of the Act.

The learned counsel for the second respondent submits that in view of dismissal of the suit filed by third petitioner and her two sons against second respondent for perpetual injunction, which was dismissed on10.12.2003, the petitioners cannot be said to be in possession of the property. The learned Assistant Government Pleader for Revenue (Assignment) submits that the first respondent would take appropriate action if the petitioners have contravened the terms and conditions of the assignment.

The factual matrix, as well as the point for consideration are in a narrow compass. There is no denial that the competent authority assigned surplus agricultural land to the petitioners. The contention of the second respondent that agreement was entered into in her favour is disbelieved by Civil Court in O.S.No.78 of 1995 as well as A.S.No.112 of 2002. Indeed, the second respondent filed a suit for specific

performance of agreement of sale and consequential perpetual injunction. When the plea of the second respondent was not accepted, it is not possible to draw any inference that the second respondent is in possession of the property. Admittedly, it is only the third petitioner who filed the suit against the second respondent and lost the same, but the same may not have any bearing with regard to the possession of the property. On balance of probabilities, having regard to the material on record, it is reasonable to infer that the petitioners are in possession of the property by reason of the assignment granted to them. It is needless to point out unless and until said assignment is cancelled and the land is resumed to the Government, the petitioners cannot be dispossessed.

In the result, the Writ Petition is disposed of with the above observations and directions. It is made clear that it shall be open to the competent authority to take appropriate action against the petitioners in accordance with law if there is any violation of terms and conditions of the assignment.

_____

(V.V.S.RAO, J)

30.11.2005

bnr